

SUSAN MATIVO

IBLA 80-399

Decided January 16, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 62303, etc.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Federal Land Policy Management Act of 1976: Service Charges-- Mining Claims: Recordation

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file an instrument required by 43 CFR 3833.1-2(a), (b), and 3833.2-1 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim and it is properly declared abandoned and void.

APPEARANCES: Susan Mativo, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Susan Mativo has appealed on behalf of herself and members of her family from a decision of the California State Office, Bureau of Land Management (BLM), dated January 15, 1980, which declared the Pumice

Placer, Pumice Placer #1, Pumice #1, and Pumice #2 placer mining claims, CA MC 62303-62305, abandoned and void because copies of the notices of location had not been properly filed with BLM on or before October 22, 1979, as required by 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a).

The mining claims were located in 1927 or 1931. Copies of the recorded notices of location were received by BLM on October 17, 1979, but without the required service fees. The documents were returned to the sender. The location notices were resubmitted to BLM on December 19, 1979, with the required service fees, but after the statutory due date of October 22, 1979. The documents and service fees were again returned to one Charles Brown with the decision of January 15, 1980.

In the statement of reasons for appeal, it is contended that the regulations allow 30 days after notice within which to cure a defective filing, but no reason is given for the failure to submit the service fees with the original submission. Nor is it denied that the fees were not timely paid.

[1] The applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." Payment of the service fee is a mandatory requirement. Without payment of the service fee, there can be no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal docketed, No. 79-2255 (10th Cir. Sept. 28, 1979); Phyllis Wood, 46 IBLA 311 (1980). See 43 U.S.C. § 1734 (1976). There is no provision in the regulations for curing such a defect, for under the statute and regulations, it is contemplated that the service fee will be paid at the time of submission of the copy of the location notice, and that the submission will be within the statutory period for such filing.

[2] The regulation, 43 CFR 3833.4(a), states: "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 * * * within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim * * * and it shall be void." As a result of the failure to submit the copies of the location notices, with the appropriate service fees, within the prescribed time, BLM was required to declare their mining claims abandoned and void. Phyllis Wood, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

